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No. 91-273

In The

Supreme Court of the United States

October Term, 1991

ALTRAN CORPORATION,
Petitioner,

v.

FORD MOTOR COMPANY,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals fully consider and correctly decide the purpose and meaning of the 1970 final judgment in *United States v. Ford Motor Company*?

2. Did the Court of Appeals fully consider and correctly grant a new trial, consonant with the Seventh Amendment, when it directed that Ford Motor Company's claims be resubmitted for trial before a new jury?

3. Did the Court of Appeals fully consider and correctly decide that Ford Motor Company's service of Altran Corporation perfected its new trial motion?

RULE 29.1 STATEMENT

The subsidiaries of Ford Motor Company required to be disclosed under Rule 29.1, Sup.Ct.R., are listed in Appendix A.

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ADDITIONAL RULE INVOLVED IN THIS CASE

Rule 65(d), Fed.R.Civ.P.:

> Every order granting an injunction and every restraining order . . . shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. . . .

STATEMENT OF THE CASE

This matter arises in connection with an appeal of a civil action in which respondent, Ford Motor Company ("Ford"), seeks, *inter alia*, to prevent future sales of counterfeit and

spurious Ford packaging for automotive parts by petitioner, Altran Corporation ("Altran").[1]

A. Ford's Automotive Replacement Parts Business

Since at least as early as 1903, Ford continuously has used its world renowned FORD trademark for motor vehicles and their constituent parts and related accessories. *See*, Ford. Tr. Exh. 1(a)-(n).[2] In 1966, Ford authored a unique Speeding Car Design for its automotive parts and accessories packaging, representative specimens of which are depicted below:

[1] In addition to Altran, the following persons were defendants before the trial court, but did not appear before the appellate court in this case: Summit Motor Products, Inc., Alto Products Corporation, Sanford Landa and Dorothy Landa (collectively "the Summit defendants"); Tension Envelope Corporation ("Tension"); and Acme Folding Box Corporation, Inc. ("Acme"). Consent judgments were entered against Acme and the Summit defendants on April 10, 1986 and July 9, 1990, respectively. Cross motions to enforce a settlement agreement are pending as to Tension.

[2] Ford owns numerous United States trademark registrations, including incontestable registrations for its FORD and MOTORCRAFT trademarks for a wide variety of automotive products. 15 U.S.C. §§ 1058 & 1065; Tr. Trans. 2.38-.39; Dk. No. 41, at ¶24. Ford also now owns a United States Trademark Registration for its Ford Speeding Car Design mark (Reg. No. 1,628,837).

Tr. Trans. (2/1/90), at 21-24; *accord,* Ford Tr. Exhs. 5 & 6(a)-(b).[3] In 1967, Ford obtained United States Copyright Registrations Numbers K 81363 and KK 201395 for its Speeding Car Design and its packaging design which incorporates its Speeding Car Design. Tr. Trans., at 2.39-.40; Ford Tr. Exhs. 3(a)-(b) & 4(a)-(b).

From 1967 to 1984, Ford sold in excess of $18.5 billion worth of automotive replacement parts and accessories in the aforesaid packaging and has expended over $118 million in promoting said goods under its trademarks. Tr. Trans., at 2.39-.40, 2.43-.44 & 2.46; Ford Tr. Exhs. 37 & 38.[4] Ford annually sells well in excess of 100 million parts and accessories in packaging bearing the FORD trademark and the Ford Speeding Car Design in either blue or red packaging. Tr. Trans., at 4.16-.17.

B. Ford's Efforts To Protect United States Consumers From Counterfeit Automotive Parts

In the early 1980's, concerned with reports of increasing sales of counterfeit automotive parts, Ford launched an in depth, nationwide investigation of counterfeiting. Tr. Trans., at

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[3] The illustrations depicted at page 4 of Altran's petition are *wholly* unrepresentative of Ford automotive replacement parts packaging. Such illustrations depict packaging only for spark plugs used during the early 1970's. Altran's illustrations do not depict the typical use of the FORD and Oval design trademark in conjunction with the Ford Speeding Car Design mark. *Compare,* Altran Pet., at 4, *with,* Brief of Defendant-Appellee-Cross Appellant Altran Corporation, at 4.

[4] Altran's assertion (Altran Pet., at 14-15) that Ford did not use its Ford Speeding Car Design mark until 1969, made for the first time before this Court, is not supported by the cited material (5 Joint Appendix to the Briefs, at 2155), and is directly contrary to the uncontroverted evidence of record. *Supra; see also,* United States Trademark Registration No. 1,628,837 (date of first use October, 1966).

2.47-.48. Ford's concerns stemmed not only from its resulting lost profits, but also from its findings that the spurious Ford parts reaching United States consumers often were of inferior quality to genuine Ford parts. Tr. Trans., 2.49 & 4.48-.49. As a result of this investigation, Ford initiated law suits and successfully obtained relief against in excess of forty (40) companies and individuals engaged in counterfeiting activities. Tr. Trans., at 2.47-.52.

Ford filed this action on May 21, 1984. On that date, pursuant to a seizure order entered by the Honorable Frederick B. Lacey, U.S.D.J., the United States Marshal seized hundreds of thousands of separate pieces of packaging and packaged automotive parts bearing counterfeit and spurious Ford trademarks and copyrighted design as well as other related materials from Summit Motor Products, Inc. Tr. Trans., at 2.99-.100.[5]

C. Altran's Counterfeiting Activities

1. Altran Supplied Counterfeit Ford Packaging To the Summit Defendants

On June 6, 1984, within two weeks of the Summit seizure, Ford deposed Summit Motor Products, Inc., by its president, defendant Sanford Landa. Tr. Trans., at 3.28. Mr. Landa

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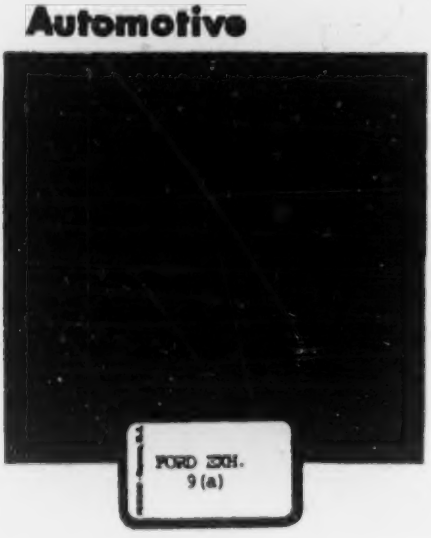
[5] Altran's representation that the trial court ordered the return of the automotive parts seized from the Summit defendants "[w]hen it was determined that there were no counterfeit parts" is, at best, disingenuous. Altran Pet., at 6. The trial court did order that parts not bearing Ford marks be returned upon the condition that they be removed from their spurious packaging which remained subject to the seizure order. Dk. No. 67, at 2-3.

identified Altran as its supplier of the spurious and counterfeit Ford plastic packaging such as that depicted below:



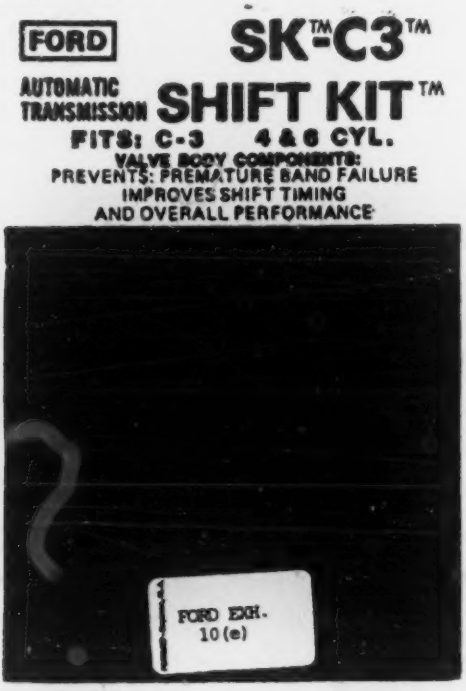
Tr. Trans., at 3.28-.29, 3.34-.35; Ford Tr. Exh. 9(a). More importantly, *Altran unequivocally admitted at trial that it had supplied such packaging to the Summit defendants.* Tr. Trans., at 6.258-.261, 6.264, 6.266 & 6.273-.274; *see also,* Dk. No. 86. In addition, Summit's president testified at trial that the Summit defendants sold parts in the spurious plastic packaging to its customers throughout the period 1980-84. Tr. Trans., at 3.39; Tr. Trans., at 3.30-.31; Ford Tr. Exh. 11.

Uncontroverted evidence at trial established multiple instances of actual confusion among independent dealerships which had returned for credit to Ford parts packaged in packaging bearing spurious and counterfeit Ford trademarks indistinguishable from the packaging Altran admittedly

supplied to the Summit defendants. Tr. Trans., at 3.145-.148 & 4.60-.69; Ford Trial Exhs. 27, 99 & 115; *see,* Altran Pet., at 49a.

2. Altran's Direct Sales Of Automotive Parts Packaged In Counterfeit Ford Packaging

In addition to acting as a packaging supplier, Altran also directly sold and distributed automotive shift kits in packaging bearing the FORD trademark and the Ford Speeding Car Design as depicted below:



Ford Tr. Exh. 10 (e); Tr. Trans., at 6.239, 6.245 & 6.256; *see also* Ford Tr. Exh. 10(a-d); Tr. Trans., at 4.84-85; Ford Tr. Exh. 107. *Altran's president unequivocally admitted that Altran had for years purchased and sold shift kits in such packaging bearing the FORD, as well as the Ford Speeding Car Design, trademarks.* Tr. Trans., at 6.239, 6.245 & 6.256.

D. Disposition Of Ford's Claims By Lower Courts

On February 7, 1990, after a jury trial, the trial court entered judgment against Ford's claims against Altran. 2 Supplemental Appendix to the Briefs, at 216 & 217. On February 22, 1990, Ford filed and served Altran with a motion for new trial on the grounds that the jury's verdict was against the weight of the evidence. Dk. No. 265. Ford's motion was denied by the trial court on March 26, 1990. *See*, Altran Pet., at 1c-11c. On appeal, the Third Circuit found that the trial court had abused its discretion in denying Ford's motion for new trial. Altran Pet., at 26a-52a.

E. Altran's Racketeering Counterclaim

In addition to Ford's claims against Altran, Altran filed a racketeering counterclaim alleging, *inter alia*, that Ford's FORD, MOTORCRAFT and Ford Speeding Car Design marks were divested by the final judgment entered in *United States v. Ford Motor Company*, 286 F.Supp. 407 (E.D.Mich. 1968), *further proceedings at*, 315 F.Supp. 372 (E.D.Mich.), *final judgment at*, 1971 Trade Cas.(CCH) ¶ 73,445 (E.D.Mich. 1970), *aff'd*, 405 U.S. 562 (1972), *modified*, 1983-1 Trade Cas.(CCH) ¶ 65,436 (E.D.Mich. 1974). *See*, 1 Joint Appendix to the Briefs, at 93-191. The trial court granted summary judgment against Altran's counterclaim on October 24, 1988. 1 Joint Appendix to the Briefs, at 191; *see also*, Altran Pet., at 1d-8d. The appellate court affirmed the trial court's grant of summary judgment. Altran Pet., at 10a-22a.

REASONS FOR DENYING THE PETITION

I. The Court of Appeals Fully Considered and Correctly Decided the Purpose and Meaning of the 1970 Final Judgment in *United States v. Ford Motor Company*

A. The Lower Courts' Narrow Construction Of The Final Judgment Was Not "Unwarranted and Unprincipled"

Rule 65(d) of the Federal Rules of Civil Procedure provides in pertinent part:

> Every order granting an injunction and every restraining order . . . shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other documents, the act or acts sought to be restrained. . . .

As this Court has noted:

> [T]he specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood. *International Longshoremen's Assn. v. Philadelphia Marine Trade Assn.*, 389 U.S. 64, 74-76; 88 S.Ct. 201, 206-208, 19 L.Ed.2d 236 (1967); *Gunn [v. University Committee to End War*, 399 U.S. 383], 388-389 [(1970)]. *See generally* 7 J. Moore, Federal Practice and Procedure ¶ 2955. Since an injunctive order prohibits conduct under threat of judicial punishment, *basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed.*

Schmidt v. Lessard, 414 U.S. 473, 476 (1974) (emphasis added, footnotes omitted); *accord, Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 444 (1974); *see also, Atiyeh v. Capps*, 449 U.S. 1312, 1317 (1981) (Rehnquist, Circuit Justice).

Numerous decisions of the courts of appeals reflect this Court's above noted concern that the terms and scope of injunctive relief be specified in an explicit and unambiguous fashion. According to the Second Circuit:

> [An enjoined party] may only be held in contempt if it violated a clear and unambiguous order that left no doubt in the minds of those to whom it was addressed. *Hess v. New Jersey Transit Rail Operations, Inc.*, 846 F.2d 114, 116 (2d Cir. 1988). In determining specificity, the party enjoined must be able to ascertain from the four corners of the order precisely what acts are forbidden. *Sanders v. Air Line Pilots Ass'n, Int'l*, 473 F.2d 244, at 247 (2d Cir. 1972).

Drywall Tapers and Pointers, Local 1974, etc. v. Local 530 of Operative Plasterers and Cement Masons Int'l Assoc., 889 F.2d 389, 395 (2nd Cir. 1989), *cert. denied*, ___ *U.S.* ___, *110 S.Ct. 1478 (1990)*. According to the Third Circuit:

> . . . prohibited conduct will not be implied from such orders; that they are binding only to the extent they contain sufficient description of the prohibited or mandated acts. The long-standing, salutary rule in contempt cases is that *ambiguities and omissions in orders redound to the benefit of the person charged with contempt.*

Ford v. Kammerer, 450 F.2d 279, 280 (3rd Cir. 1971) (*per curiam*, emphasis added); *see, NBA Properties, Inc. v. Gold*, 895 F.2d 30, 32 (1st Cir. 1990); *see also, Calvin Klein Cosmetics Corp. v. Parfums de Coeur, Ltd*, 824 F.2d 665, 669 (8th Cir. 1987); *Ideal Toy Corp. v. Plawner Toy Mfg. Corp.*, 685 F.2d 78, 83-84 (3rd Cir. 1982).[6]

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[6] Since Rule 65(d), Fed.R.Civ.P., explicitly prohibits reference to matters beyond the face of the order to ascertain the scope of an injunction, all "evidence" beyond the "four-corners" of such order is irrelevant and inadmissible. *See, Narramore v. United States*, 852 F.2d

The 1970 divestiture order in the final judgment in *United States v. Ford Motor Company* provides in part:

> No later than eighteen (18) months after this Judgment is not subject to further appeal, Ford shall divest itself of all of its interest in the tradename and trademark "Autolite" and all of its facilities in the United States for the production of automotive batteries and spark plugs, except a battery plant located in Shreveport, Louisiana. Said production facilities shall be divested in going, viable and operating condition.
>
> The assets to be divested shall include the tradename and trademark "Autolite" and the spark plug and battery production facilities which were acquired from The Electric Autolite Company by Ford in 1961, and all improvements, betterments, replacements and additions made thereto by Ford since such acquisition up to the date of divestiture.
>
> Divesture of the facilities of the production of automotive batteries may be made separately but in any event, the tradename and trademark "Autolite" and the facilities for the production of spark plugs (hereinafter referred to as Autolite assets) shall be disposed of as a unit.

1971 Trade Cas.(CCH) ¶ 73,445, at 89,843. Before the trial court, Altran argued that the language "all improvements, betterments, replacement and additions made thereto" not only applied to the divested production facilities, it also applied to the divested trademark and tradename AUTOLITE.[7]

485, 490 (9th Cir. 1988); *see also, United States v. Reader's Digest Ass'n, Inc.*, 662 F.2d 955, 962 n.5 (3rd Cir. 1981), *citing, United States v. Beatrice Foods Co.*, 493 F.2d 1259, 1264 (8th Cir. 1974), *cert. denied*, 455 U.S. 961 (1975); *but see*, Altran Pet., at 17a.

[7] In its petition, Altran for the first time argues that the relevant language of the final judgment is the "all of its interest" provision contained in the first paragraph of Section IV of the order, rather than the "all improvements, betterments, replacements and additions

Thus, according to Altran, such language divested Ford of all ownership rights in the Ford Speeding Car design mark, the MOTORCRAFT mark (subsequently used by Ford as a replacement for the AUTOLITE mark) and the famous FORD and Oval Design mark. *See, e.g.*, Altran Pet., at 4d; 1 Joint Appendix to the Briefs, at 19-20.[8]

Interpreting the 1970 final judgment, the trial court ruled that the divesture provisions:

> . . . did not expressly name the "speeding car", MOTORCRAFT, or the Ford [O]val for parts trademarks. Logically, it is difficult to perceive that such an important matter should not be mentioned in the decree itself. Significant divestitures are not left to chance or construction. Only the AUTOLITE mark was divested by the 1970 decree. *The language "all improvements, betterments, replacements and additions" cannot be construed with any sense of rationality to include the "speeding car", MOTORCRAFT and the Ford [O]val trademarks. The intent of the decree is clear*

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language" in the following paragraph. *Compare*, Altran Pet., at 18, *with, e.g.*, Brief of Defendant-Appellee-Cross Appellant Altran Corporation, at 4, 10, 17-28 & 30-31. Altran should not now be heard to raise this new "interpretation" of the AUTOLITE final judgment for the first time before this Court. *E.g., City of Springfield, Massachusetts v. Kibbe*, 480 U.S. 257, 259, *rehearing denied*, 481 U.S. 1033 (1987).

[8] Although Altran previously argued that the final judgment divested Ford of not only the Ford Speeding Car Design mark, but also the FORD and MOTORCRAFT marks, it apparently now "limits" its theory to the Ford Speeding Car Design mark. Such a limitation has no basis in language of the final judgment because, to the extent that the Ford Speeding Car Design mark falls within the scope of the order sought by Altran, so also must the FORD trademark. Altran's interpretation, with which Ford obviously disagrees, of a decree that was crafted by the AUTOLITE trial judge in a "thorough and thoughtful way" (405 U.S. at 578), leads to an absurd result.

> *on its face and its language does not encompass defendant's postulated concepts.*

Altran Pet., at 6d (emphasis added).

On appeal, although the Third Circuit did not find the meaning of the language as clear as did the trial court, it too rejected Altran's interpretation of the final judgment, and held, *"[T]here is no clear indication on the face of the order as to the scope of the 'additions' language."* Altran Pet., at 18a-19a (emphasis added).

Thus, two United States courts have interpreted the relevant divesture language and have found that such language is, at best, ambiguous. Since such ambiguity offends the specificity requirements of Rule 65(d), Fed.R.Civ.P., such language could not have divested Ford of the Ford Speeding Car Design mark as a matter of law. Only by going beyond the "four-corners" of the final judgment and finding that the final judgment *implicitly* divested Ford of its trademark rights, can Altran's interpretation be "justified."[9] Such a construction would be, in Altran's own words "unwarranted and unprincipled."[10]

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[9] The "scope of a consent decree must be discovered within its four corners, and not be reference to what might satisfy the purpose of one of the parties to it." *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971). If the purpose of a party to a consent judgment is irrelevant, a non-party's self-serving construction of an injunction crafted in a "thorough and thoughtful way" (405 U.S. at 578), is unworthy of any consideration.

[10] Altran also argues that the lower courts ignored the grammatical structure of the final judgment. Altran Pet., at 19-21. Altran's cases involve rules of *statutory* construction, rather than interpretations of injunctions. It is self-evident that there is greater latitude for imprecision in statutory language than there is for injunctive relief since the violation of injunctive relief subjects the enjoined party to the judicial

B. The Lower Courts' Narrow Construction Does Not Impair The Judiciary's Ability To Provide Broad Remedial Relief

Altran expresses great concern that the lower courts' failure to find that the AUTOLITE final judgment *implicitly* divested Ford of its trademark rights will cripple the broad powers of the United States judiciary to craft remedial relief. *See,* Altran Pet., at 21. However, in determining that Ford should be divested of the AUTOLITE assets, including the AUTOLITE name and mark, the trial court in 1971 thoughtfully observed the inherent limitations of the judiciary (as well as the Government) in crafting remedial relief (315 F.Supp. at 374-75) and explicitly provided that:

> Jurisdiction of this cause is retained by this Court for the purpose of enabling any of the parties *to apply at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof,* for the enforcement of compliance therewith, and for the punishment of violations thereof.

1971 Trade Cas.(CCH) ¶ 73,445, at 89,845 (emphasis added); *see also,* 315 F.Supp. at 380.[11]

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contempt power. *See, Int'l Longshoremen's Ass'n. v. Philadelphia Marine Trade Ass'n.,* 389 U.S. 64, 76 (1967).

[11] Altran's insistence that the lower courts' interpretations of the AUTOLITE divestiture decree must be overturned because they are contrary to the purported intent of the *Government,* as allegedly evidenced by the testimony of a retired government attorney, clearly is mistaken. *See, e.g.,* Altran Pet., at 21-22. The scope of injunctive relief must be ascertainable from within the "four-corners" of the decree and *all* extraneous evidence is irrelevant and inadmissible. *Supra,* at 8-9 & n.6. Even if it were proper to consider some matters beyond the face of the judgment in order to interpret its meaning, only evidence of judicial intent would be admissible because the

Nothing in the decisions in this case either prevents the Government from making appropriate application for judicial determination by the United States District Court For Eastern District of Michigan for such further order as it deems necessary to give effect to the 1970 final judgment, or would prevent such court from granting such relief. Moreover, *nothing* in the opinions below would impair United States courts from crafting broad remedial relief in any other case, including making provisions, *inter alia*, to retain jurisdiction to modify injunctive provisions to meet unforseen or unforeseeable changes in circumstances which undermine the judicial intent underlying the judgment.[12]

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intent of the parties to a judgment is wholly irrelevant to its meaning. *Narramore v. United States*, 852 F.2d 485, 490 (9th Cir. 1988); *United States v. 60.22 Acres of Land*, 638 F.2d 1176, 1177 (9th Cir. 1980), *cert. denied*, 451 U.S. 985 (1981); *see also*, Altran Pet., at 17a & 19a. Finally, the Government was fully aware of Ford's use and retention of the Ford Speeding Car Design mark and it made no objection to such retention. *See*, Altran Pet., at 7d-8d; *see also*, 2 Supplemental Appendix to the Briefs, at 202-11.

[12] Altran argues that there is a "serious question" as to whether the AUTOLITE trial court was aware of Ford's use of the Ford Speeding Car Design mark in conjunction with the AUTOLITE mark because exhibits which originally had contained the design had "black out spaces where the . . . design should have appeared." Altran Pet., at 14, n.2. First, before the trial court in this action, Ford submitted color photocopies of original trial exhibits which conclusively established that evidence of Ford's use of such marks was of record before the trial court in the AUTOLITE litigation. Dk. No. 189 (Shapiro Declaration), ¶ 6 & Exh. C. Prior to filing this petition, Altran *never* had challenged the admissibility of such evidence and it should not be heard to do so for the first time before this Court. Second, Altran improperly now seeks to rely upon "evidence" (i.e., the Appendix to the Briefs from the AUTOLITE litigation) it failed to make of record before the lower courts in this action. Finally, this Court may take judicial notice of the fact that the "black out spaces" are the result of the inherent technical limitations of photocopying

II. The Court of Appeals Fully Considered and Correctly Granted a New Trial, Consonant with the Seventh Amendment, When it Directed that Ford's Claims be Resubmitted for Trial Before a New Jury

A. Appellate Review Of An Order Denying A Motion For New Trial Does Not Violate Altran's Right To A Jury Trial And Does Not Constitute A *Per Se* Violation Of The Seventh Amendment

Altran erroneously argues that any appellate review of an order denying a motion for new trial on weight of the evidence grounds constitutes a *per se* violation of the Seventh Amendment. Altran Pet., at 22. Since the Third Circuit's judgment *merely resubmits Ford's claims to a second jury,* Altran cannot reasonably argue that the appellate court has substituted its own judgment for that of a jury or that it is being denied its right to trial by jury. Furthermore, during the last fifty (50) years, the propriety of reviewing for abuse of discretion an order denying a motion for a new civil trial on the grounds that the verdict is contrary to the weight of the evidence, has been recognized by virtually every United States Court of Appeals. *E.g., Coffran v. Hitchcock Clinic, Inc.,* 683 F.2d 5, 6 (1st Cir.), *cert. denied,* 459 U.S. 1087 (1982); *Thomas v. E.J. Korvette, Inc.,* 476 F.2d 471, 474-75 & n.5 (3rd Cir. 1973); *Lindner v. Durham Hosiery Mills, Inc.,* 761 F.2d 162, 168 (4th Cir. 1985); *Georgia-Pacific Corp. v. United States,* 264 F.2d 161, 166 (5th Cir. 1959) (denial of new trial motion reversed); *Southern Railway Co. v. Miller,* 285 F.2d 202, 205 (6th Cir. 1960); *Exxon Corp. v. Exxene Corp.,* 696 F.2d 544, 551 (7th Cir. 1982) (denial of new trial motion reversed); *Digidyne Corp. v. Data General Corp.,* 734 F.2d 1336, 1347 (9th Cir. 1984), *cert. denied,* 473 U.S. 908,

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equipment in use during the early 1970's, and not the result of some elaborate conspiracy to conceal evidence.

rehearing denied, 484 U.S. 826 (1985); *King v. Southern Pacific Transp. Co.*, 855 F.2d 1485, 1491 (10th Cir. 1988); *Banco Nacional de Nicaragua v. Argonaut Insurance Co.*, 681 F.2d 1337, 1342 (11th Cir. 1982); *Eastern Air Lines, Inc. v. Union Trust Co.*, 239 F.2d 25, 30 (D.C.Cir. 1956) (rehearing *en banc* denied), *cert. denied*, 353 U.S. 942 (1957); *New Idea Farm Equipment Corp. v. Sperry Corp.*, 916 F.2d 1561, 1565-66 (Fed.Cir. 1990). By the late 1960's, an appellate court observed that the review of orders granting or denying motions for new trial for abuse of discretion on the basis of weight of the evidence, had become "standard doctrine." *Taylor v. Washington Terminal Co.*, 409 F.2d 145, 147-48 (D.C. Cir.), *cert. denied*, 396 U.S. 835 (1969); *cf., Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, __ & n.25, 109 S.Ct. 2909, 2922 & n.25 (1989) (noting general propriety of appellate review of new trial and remittitur rulings); *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980) (*per curiam*) (noting availability of appellate review of orders granting new trial motion on appeal from final judgment).[13]

Consequently, given that Altran is not being denied its right to a second jury trial, appellate review of orders denying motions for new trials on weight of the evidence grounds is appropriate to determine if an abuse of judicial discretion has

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[13] There also is significant academic support favoring the propriety of appellate review for abuse of discretion of a trial court's denial of a new trial motion on weight of the evidence grounds. Stephens, "Controlling the Civil Jury: Towards a Functional Model of Justification," 76 *Ky.L.J.* 81, 130-31 (1988); Carrington, "The Power of The District Judges And The Responsibility of Court of Appeals," 3 *Ga.L.Rev.* 507, 524-25 (1969); *cf.*, Schnapper, "Judges Against Juries—Appellate Review of Federal Civil Jury Verdicts," 1989 *Wis.L.Rev.* 237, 312-13 (1989) (grant of new trial on appeal preferable to awarding judgment n.o.v.).

occurred. Thus, Altran's argument is without merit and the issues are not important enough to warrant review.

B. The Appellate Court's "Highly Deferential" Review In The Present Case Does Not Offend The Seventh Amendment

Altran further erroneously argues that even if appellate review of an order denying a new trial motion is not a *per se* violation of the Seventh Amendment, that the appellate court's review in this action was impermissibly undeferential to the trial court's ruling. *See*, Altran Pet., at 23-24. Far from engaging in a "freewheeling reweighing of the evidence" (Altran Pet., at 23), the Third Circuit employed a "highly deferential" standard of review. More specifically, the Third Circuit ruled that:

> . . . denials [of new trial motions] are improper only if "the record is critically deficient of that minimum quantity of evidence from which a jury might reasonably [decline to] afford relief." *Wagner v. Firestone Tire & Rubber Co.*, 890 F.2d 652, 656 (3d Cir. 1989) (citation omitted). Our duty "is to uphold the jury's award if there exists a reasonable basis to do so." *Motter v. Everest & Jennings, Inc.*, 883 F.2d 1223, 1230 (3d Cir. 1989). This scope of review has been described as "highly deferential." *Id.* at 1229.

Altran Pet., a 26a-27a. Thus, the Third Circuit standard of review is, if anything, among the most restrictive employed by any of the circuits. *See, supra*, at 15-16; *see generally*, Childress, "A Standards of Review Primer: Federal Civil Appeals," 125 F.R.D. 319, 345 (1989).[14]

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[14] Altran further erroneously argues that because Ford did not move for a directed verdict, it was not entitled to move for a new trial on weight of the evidence grounds. *See*, Altran Pet., at 26-27. It is well established, however, that a motion for a directed verdict is not a prerequisite to moving for a new trial. *E.g., Exxon Corp. v. Exxene Corp.*, 696 F.2d 544, 551 (7th Cir. 1982); *Georgia-Pacific Corp. v. United*

III. The Court of Appeals Fully Considered and Correctly Decided that Ford's Service of Altran Perfected its New Trial Motion

A. Ford Properly Served The Only Real Party In Interest To Its New Trial Motion

Ford filed and served Altran with its motion for new trial on February 22, 1990, within ten days of the entry of judgment against Ford and in favor of Altran. *See,* Altran Pet., at 27; Rule 59(b), Fed.R.Civ.P. Ford did not serve the other named parties because of their previous agreement prior to trial to accept consent judgments providing monetary and injunctive relief against them and in favor of Ford. These defendants were neither parties to, nor bound by, the results of the jury trial of Ford's claims against Altran.

By proceeding to trial only on Ford's claims against Altran, and not those against the remaining defendants, the trial court effectively bifurcated the original action. *See, e.g.,* Tr. Trans., at 3.95-.96 (trial judge observing on the record that *all* defendants except Altran had settled with Ford); *see also,* Rule 42(b), Fed.R.Civ.P. Having agreed to the entry of consent judgments in favor of Ford, the remaining "defendants" had neither a legally cognizable interest in the jury trial, nor in Ford's subsequent motion for new trial. *See, United States v. Armour & Co.,* 402 U.S. 673, 681 (1971) ("[P]arties [to a consent judg-

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States, 264 F.2d 161, 165-66 (5th Cir. 1959). Moreover, Altran's authority is inapposite. *E.g., Jurgens v. McKasy,* 927 F.2d 1552, 1557 (Fed.Cir. 1991) (noting that defendants could challenge any issue for abuse of discretion, such as insufficiency of the evidence, on motion for new trial even after failure to make timely motion for directed verdict); *Smith v. Ferrel,* 852 F.2d 1074, 1075-76 (8th Cir. 1988) (court notes that it may review sufficiency of evidence on its review of order denying motion for new trial notwithstanding plaintiff's failure to move for directed verdict).

ment] waive their right to litigate the issues involved in the case. . . ."); *cf., Karcher v. May,* 484 U.S. 72, 74 (1987) (". . . one who is not a party or has not been treated as a party to a judgment has no right to appeal therefrom."). Service of Ford's new trial motion only upon Altran, therefore, complies with the service requirements of Rule 5, Fed.R.Civ.P. *See,* Rule 1, Fed.R.Civ.P. (The Federal Rules of Civil Procedure ". . . shall be construed to secure the just . . . determination of every action.").

B. Altran Lacks Standing To Raise The Issue Of Service

Having received timely service of Ford's motion, Altran lacks standing to object to the purported lack of timely service of others. Altran Pet., at 8a-9a. In *Rosen v. Dick,* 639 F.2d 82 (2nd Cir. 1980) (rehearing denied), the question of effective service was addressed in the context of the requirement of Rule 38, Fed.R.Civ.P., for service of a jury demand. The plaintiff argued, *inter alia,* that notwithstanding that it had been served properly, the defendant's failure to serve all other parties constituted a waiver of his right to jury trial. 639 F.2d at 88. The appellate court ruled that a party properly served "should not be heard . . . to complain of inadequate notice." 639 F.2d at 90. *See also, Stewart v. County of Sonoma,* 634 F.Supp. 773, 775 (N.D.Cal. 1986) (plaintiff has no standing under Rule 5(a), Fed.R.Civ.P., to object to failure by a defendant to serve offer of judgment on co-defendant).

CONCLUSION

For the aforesaid reasons, Ford prays that this Court deny Altran's Petition For Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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APPENDIX A

RULE 29.1 LIST OF SUBSIDIARY COMPANIES

Ford Motor Company has no parent corporation. The following is a list of companies in which Ford Motor Company owns a significant (although not necessarily a controlling) interest, but which are not wholly owned by it:

United States of America

American Renaissance Insurance Company
Autolatina America, Inc.
Dearborn Capital Corporation
Fairlane Life Insurance Company
Ford Holdings, Inc.
Jaguar Cars, Inc.
Jaguar Motors, Inc.
Lincoln-Rowe Management
Shoppers Mart, Inc.
The Hertz Corporation

Argentina

Autolatina Argentina S.A. de Ahorro Para Fines Determinados
Invercred Compania Financiera S.A.
Transax Sociedad Anonima, Comercial, Industrial, y Financiera
Volkswagen Inversiones S.A.
Volkswagen Sociedad Anonima de Ahorro Para Fines Determinados

Australia

Australian Road Credit Limited
Foral Service Proprietary, Ltd.
Ford Credit Australia Limited
Ford Credit Australia Wholesale Limited
Ford Motor Company of Australia Limited
Ford Sales Company of Australia Limited

Belgium

Ford Credit N.V.
Ford Motor Company (Belgium) N.V.

Brazil

Apolo - Administradora de Bens S/C Ltda.
Autolatina Brasil, S.A.
Autolatina Distribuidora de Titulos e Valores Mobiliaros Ltda.
Autolatina Financiadora S.A. - Credito, Financiamente e Invest.
Autolatina Leasing S/A - Arrandamente Mercantil
Autolatina Previdencia Privada
Autolatina S.A.
Consorcio Nacional Ford Ltd.
Consorcio Nacional Volkswagen Ltda.
Ford Brasil S.A.
Ford Distribuidora de Productos de Petroleo Ltda.
Fundacao Autolatina
Inter-Locadora S/A
Sociedade Paulista de Aparelhos Domesticos "SPAD" Ltda.
Volkswagen Factoring - Fomento Comercial S/A

Canada

Canadian Road Credit Company
Ford Credit Canada Limited
Ford Motor Company of Canada, Limited
Jaguar Canada Inc.

China (Taiwan)

Ford Enterprise Company Taiwan, Ltd.
Ford Taiwan Services, Limited
Jaguar Cars Taiwan Limited

Denmark

Ford Credit A/S
Ford Motor Company A/S

Finland

Oy Ford Ab
Oy Ford Credit Rahoitus

France

Ford France S.A.

Germany

Jaguar Deutschland GmbH

Holland

Ford Credit B.V.
Ford Nederland B.V.
Stuurgroap Holland B.V.

Italy

Ford Credit S.P.A.
Ford Italiana S.P.A.
Ford Leasing S.P.A.
Ghia S.P.A.
Jaguar Italia S.P.A

Japan

Jaguar Japan KK
Japan Climate Systems Corporation

Mexico

Altec Electronica Chihuahua, S.A. de C.V.

Norway

Ford Motor Norge A.S.

Portugal

Ford Electronica Portuguesa, Ltd.

Singapore

Ford Motor Company Private Limited

Spain

Ford Credit S.A.

Sweden

Ford Credit AB
Ford Motor Company Aktiebolag
Ford Vagnekadegaranti AB

Switzerland

Ford Credit, S.A.
Ford Motor Company (Switzerland) S.A.

United Kingdom

AG Cars Ltd.
Aston Martin (RDP) Limited
Aston Martin Finance Limited
Aston Martin Lagonda Design Limited
Aston Martin Lagonda Limited
Aston Martin Lagonda U.S.A., Inc.
Aston Martin Sales Limited
Automotive Finance Limited
Daimer Transport Vehicles, Ltd.
Ford Automotive Leasing Limited
Ford Motor Company Limited
Ford Personal Import Export Ltd.
Jaguar 1984 Limited
Jaguar Cars Exports Limited
Jaguar Cars Finance Limited
Jaguar Cars Holdings Limited
Jaguar Cars Limited
Jaguar Cars Overseas Holdings Limited
Jaguar Finance Limited
Jaguar Group Limited
Jaguar Holding Limited
Jaguar Insurance Limited
Jaguar International Finance Ltd.
Jaguar Limited
Jaguar Sport Limited
Lagonda Properties Limited
S3 Cars Limited
TC Lavin Limited
The Daimer Company Limited
The Jaguar Collection Limited
The Lancaster Motor Company Limited

Venezuela

Ford Motor Credit S.A.